

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

RICK A. WELTY,	)	
	)	C.A. No. 08-000780
Appellant,	)	
	)	
vs.	)	
	)	
MICHAEL D. SHAHAN,	)	
Director, Division of	)	
Motor Vehicles,	)	
	)	
Appellee.	)	

Submitted: July 1, 2009  
Decided: August 11, 2009

*Vincent Vickers, Esquire, Attorney for Appellant*  
*Frederick Schranck, Esquire, Attorney for Appellee*

**DECISION ON APPEAL OF COMMISSIONER'S ORDER**

This is an appeal by Rick A. Welty ("Welty") from the Commissioner's Recommendation dismissing an Appeal of the Department of Motor Vehicle's Order revoking his driver's license pursuant to 21 *Del. C.* §§ 2742(d) and 2744.

**FACTS**

The Division of Motor Vehicles ("DMV") revoked Welty's driver's license pursuant to 21 *Del. C.* § 2742. Subsection (d) of that statute provides:

No revocation . . . is effective until the Secretary or a police officer or other person acting on the Secretary's behalf notifies the person of revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective.

Welty did not request a hearing within the 15-day period, and subsequently DMV revoked his license. Welty appealed the revocation of his license to this Court, contending that he was not afforded proper and timely notice of the 15 day period to request a hearing. On June 9, 2009, the Commissioner recommended dismissal of the appeal. The Commissioner held that the notice provided Welty was sufficient and proper. Welty has appealed the Commissioner's Recommendation.

## **STANDARD OF REVIEW**

### **Review of a Commissioner's Recommendation**

The dismissal of an appeal is case-dispositive. The standard of review of a Commissioner's Recommendation for case-dispositive matters is *de novo*.<sup>1</sup> The judge may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner."<sup>2</sup>

### **Review of the DMV Order**

Appeals to this Court from Orders issued by the DMV are determined on the record.<sup>3</sup> Therefore, the scope of review is limited to correcting errors of law and determining whether the record below supports the lower court's findings of fact and conclusions of law.<sup>4</sup> Thus, while this Court must make a *de novo* review of the Commissioner's Recommendation, it is also required to limit its review of the DMV Order

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<sup>1</sup> *Court of Common Pleas Civil Rule 112(A)(4)(iv.)*.

<sup>2</sup> *Id.*

<sup>3</sup> *Civil Rules 72.1(a) and 72.1(g); Shahan v. Landing*, 643 A.2d 1357, 1359 (Del. 1994).

<sup>4</sup> *Mills v. Voshell*, 1993 WL 543997 (Del. Super. Ct.) *citing Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991).

to the record made below. However, for the reasons set forth below, the Court in the present matter need only review the Commissioner's recommendation, since it lacks jurisdiction to hear an appeal of the DMV order.

### **APPEALS WITHOUT A DMV HEARING**

Under 21 *Del. C.* § 2744, the Secretary's decision is final and may not be appealed unless the defendant requests a hearing and the Secretary rules against the defendant at that hearing. If no hearing has been held, the right to appeal the Secretary's decision has not been perfected, and this Court therefore lacks jurisdiction to entertain the appeal. In *Wynne v. Shahan*,<sup>5</sup> this Court concluded that the statute conferring appellate jurisdiction upon it to hear DMV appeals narrowly limits that jurisdiction to appeals of DMV *hearings*. This Court does not have jurisdiction to hear an appeal of a denial or failure to grant a DMV hearing.<sup>6</sup>

### **DUE PROCESS**

Welty argues that his Constitutional rights to both substantive and procedural due process were violated. He claims that the notice he received of his right to a DMV hearing was inadequate since, at the time of his DUI arrest, he was hospitalized due to the related motor vehicle accident. The arresting officer allegedly left the Notice of Revocation with the attending nurse, who placed it among Welty's personal effects. He

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<sup>5</sup> 2004 WL 1067518 (Del. Com. Pl., May 11, 2004)

<sup>6</sup> See *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.).

subsequently was discharged from the hospital before the 15 day period expired, but did not find the Notice until a day after the 15 day period. The Commissioner, *sua sponte*, found that the notice provided was sufficient.

This Court need not address the merits of Welty's arguments in order to affirm the dismissal of the appeal, because, as stated above, it is not within this Court's jurisdiction to address the due process issues as presented in this case. There is no statutory authority for this Court to hear this appeal. Neither 21 *Del. C.* § 2744 nor any other statute within the Delaware Code confers such power. Therefore, Welty's due process claim cannot be addressed by an appeal to this Court, but may be pursued in Superior Court by writ of certiorari.<sup>7</sup>

### CONCLUSION

After a *de novo* review of the law and facts, I find that the Commissioner was incorrect in ruling on the sufficiency of notice in this matter, but was correct in recommending dismissal of the appeal. The Commissioner's decision is **AFFIRMED**. The appeal is **DISMISSED**.

**IT IS SO ORDERED.**

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**Kenneth S. Clark, Jr., Judge**

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<sup>7</sup> *Wynne v. Shahan*, *supra* (citing *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.)).